

### **REMARKS**

Claims 5, 58, 61 and 62 have been amended to more clearly describe the inventive subject matter without narrowing the scope of protection. Upon entry of the foregoing amendments, claims 1, 3-7, 13, 14, 35, 44, 51 and 53-76 would be pending.

Applicants respectfully request reconsideration of this application in view of the foregoing amendments and in view of the following reasons.

#### **Interviews with Examiner**

Applicants' counsel take this opportunity to thank the Examiner for granting the telephone interviews held on July 18, 2003 and July 28, 2003. In the first interview, the Examiner agreed to enter and consider a 37 C.F.R. § 1.131 Declaration in response to the rejection of claim 57 under 35 U.S.C. § 102(a). The Examiner further agreed to consider the extent to which the election of species requirement should be withdrawn and the search expanded, following entry of the § 1.131 Declaration.

In the second interview, the Examiner agreed that claims 58 and 61, as amended above, would be entitled to claim priority to Provisional Application No. 60/198,545 and would be favorably considered.

#### **35 U.S.C. § 112, First Paragraph**

Claims 61-63 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

The foregoing amendments obviate this rejection in part.

#### **35 U.S.C. § 112, Second Paragraph**

Claim 62 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

The foregoing amendments obviate this rejection.

**35 U.S.C. § 119(e)**

Claims 58 and 61-63 are not deemed by the Office to be entitled under 35 U.S.C. § 119(e) to the benefit of the April 19, 2000 filing date of Provisional Application No. 60/198,545. Though not intended as an admission that the claims were not entitled to the filing date of Provisional Application No. 60/198,545, the foregoing amendments render this issue moot with respect to the following rejections.

**35 U.S.C. § 102(a) and (b)**

**Bortolotti et al.**

Claim 57 is rejected under 35 U.S.C. § 102(a) and claims 61-63 are rejected under 35 U.S.C. § 102(b) as being anticipated by the Bortolotti et al. article.

Applicants submit with this communication a Declaration under 37 C.F.R. § 1.131. The Declaration, signed by all of the applicants, establishes that the applicants conceived and reduced to practice the invention of claim 57 before the publication date of the Bortolotti et al. article. Thus, the claimed invention was not patented or described in a printed publication before the applicants' invention. Nor was the claimed invention known or used by others in this country because the authors of the Bortolotti et al. article reside in Italy. Consequently, the Bortolotti et al. article is not prior art under 35 U.S.C. § 102(a).

The foregoing amendments obviate the rejection of claims 61-63. As amended, claims 61-63 would be entitled to the benefit of the April 19, 2000 filing date of Provisional Application No. 60/198,545 (see, for example, handwritten page 16, line 21 to handwritten page 17, line 2; and handwritten page 20, lines 6-11). Since the Bertolotti et al. article was not published more than one year before the effective filing date of claims 61-63, it is not prior art under 35 U.S.C. § 102(b).

**Watkins et al.**

Claims 58, 61 and 63 are rejected under 35 U.S.C. § 102(a) as being anticipated by Watkins et al. abstract.

The foregoing amendments and the re-executed Declaration under 37 C.F.R. § 1.132 obviate this rejection. As amended, claim 58 would be entitled to the benefit of the April 19, 2000 filing date of Provisional Application No. 60/198,545 (see, for example, handwritten page 19, lines 3-5; page 54, third full paragraph; and handwritten page 56, claim 2). Claims 61 and 63 would also be entitled to the benefit of the April 19, 2002 filing date for the reasons discussed above. Since the Watkins et al. abstract was neither patented nor described in a printed publication known, nor used by others in this country before the effective filing date of claims 58, 61 and 63, it is not prior art under 35 U.S.C. § 102(a).

**35 U.S.C. § 102(e)**

**Gmunder et al.**

Claims 58 and 61-63 are rejected under 35 U.S.C. § 102(e) as being anticipated by the Gmunder et al. application.

For the reasons discussed above, amended claims 58 and 61-63 would be entitled to the benefit of the April 19, 2000 filing date of Provisional Application No. 60/198,545. Since the Gmunder et al. application was not filed before the effective filing date of claims 58 and 61-63, it is not prior art under 35 U.S.C. § 102(e).

**Allowability of Claims 59 and 60**

Applicants acknowledge with appreciation the Examiner's indication of allowable subject matter in claims 59 and 60. Since the Examiner has conceded that claims 59 and 60 are entitled to the benefit of the April 19, 2000 filing date of Provisional Application No. 60/198,545 (see Paper No. 12, paragraph 5), applicants respectfully submit that the Bortolotti et al. article would not be prior art against these claims.

**CONCLUSION**

Applicants believe that this application is now in condition for allowance. Favorable reconsideration of this application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of this application.

Respectfully submitted,

Date September 8, 2003

FOLEY & LARDNER

Customer Number: 22428



22428

PATENT TRADEMARK OFFICE

Telephone: (202) 295-4163

Facsimile: (202) 672-5399

By Suet M. Chong

Suet M. Chong  
Attorney for Applicant  
Registration No. 38,104